IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.974 OF 1998

Shri Uday Baburao Yesardekar
Aged adult,
Residing at 1242 D Ward
Umaravkar Galli,
Guruwar Peth, Kolhapur ..Petitioner

Vs.

1. State of Maharashtra
   through its Secretary,
   tribal Development Deptt.
   Mantralaya, Mumbai-400 032.

2. Chairman
   Committee for Scrutiny and
   Verification of Tribe Claims
   Maharashtra State
   28, Queens Garden
   Pune-411 001.

3. Tahsildar and Executive
   Magistrate
   Karveer, Dist: Kolhapur

4. Secretary
   Social Welfare Department
   Mantralaya, Mumbai 400 032. ..Respondent

Mr.V.A.Madane with Mr.R.K.Mendadkar for Petitioner

Mr.C.R. Sonowane, A.G.P. forRespondent Nos.1 to 4.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 8TH APRIL, 2005.

JUDGMENT (PER S.P. KUKDAY, J.)

. Petitioner belongs to Thakar Tribe which is recognised as Scheduled Tribe under Article 342 of the Constitution of India. A caste certificate was

issued to the Petitioner showing that he belongs to Thakar Tribe by Respondent No.1 after holding detailed enquiry on 27th July, 1992. The Petitioner submitted an application for the post of Clerk to the Zilla Parishad and also to the District Court. He was selected by the District Court and was posted as Clerk at Gargoti Civil Court, (Junior Division) on 19th August, 1996. The Petitioner's caste certificate was referred to the Scrutiny Committee, Kolhapur/ Respondent No.2 for verification. The Petitioner filed all the relevant documents before the Committee showing that he belongs to Thakar Tribe. Enquiry was then conducted through Vigilance Cell. After considering the material on record the Committee found that the claim of the Petitioner is not sustainable and rejected his claim.

2. The Petitioner thus filed Writ Petition in the High Court of Judicature at Bombay being writ Petition No.366 of 1997. That Petition was allowed and the matter was referred back to the scrutiny Committee with the directions that the opportunity of being heard be afforded to the Petitioner. The Caste Scrutiny Committee then provided copy of the report of the Vigilance Committee to the Petitioner asking him to give detailed reply regarding the information collected by the Vigilance Officer. After the Petitioner filed his reply, the Committee

considered the material placed before it and found that the Petitioner belongs to Bhat Thakar Tribe and not to Thakar Scheduled Tribe. Thus, the Committee again rejected the claim of the Petitioner. Being aggrieved by the order of the Committee the Petitioner has filed present Petition.

3. Learned Counsel for the Petitioner has submitted that in view of the decision of the Supreme Court in Madhuri Patil's case reported in (1994) 6 Supreme Court Cases, 245 and Plethora of other judgments on the point, it is not open to State or the Committee to deviate from the entries made in the notification. It is pointed out by learned Counsel that the Committee has failed to take in to consideration, birth Certificate of his father and other documents showing that father of the Petitioner and his relatives belong to Thakar Tribe. According to learned Counsel it was not open to the Committee to differentiate between Bhat Thakar and Thakar Scheduled Tribes.

4. On the other hand learned A.G.P. contends that the Committee has conducted an enquiry through Vigilance Cell. Information regarding the characteristics, customs etc. of the family of the Petitioner and other information is collected by the Vigilance Officer. Report of the Vigilance Officer

as well as explanation submitted by the Petitioner is considered by the Scrutiny Committee while coming to the conclusion that the Petitioner does not belong to the Thakar Schedule Tribe, as per Entry No.44 in the Presidential Notification. Learned A.G.P. contends that considering the material on record the Petition deserves to be dismissed.

5. Turning to the first contention of the Counsel for the Petitioner, it may be pertinent to refer to the Judgment of the Apex Court reported in (1994) 1 of Supreme Court Cases, page 359 in the matter of **Palghat Jilla Thandan Samudhaya Smrakshna Samithi and another Vs. State of Kerala and another.** In that case the dispute was that the Ezhava/Thiyya residing in some parts of erstwhile Malbar District do not belong to Thandan Scheduled Tribe which was included in the Presidential Notification. On receipt of complaints, State Government had issued a notification giving directions that while issuing caste certificate it should be made clear whether the person belongs to Ezhava Community or Thandan Community. Their Lordship dealt with the submissions and came to the conclusion that the entry in the Presidential Notification can be made only by the Parliament. If the State has encountered some material which requires modification of the notification the State

is at liberty to make a representation to the Parliament in that behalf. In para 21 of the report it is observed that:-

> . "It is open to the state Government, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly."

. Based on this Judgment, this Court has also taken a similar view, therefore, the first contention of learned Counsel for the Petitioner that it was not open to the respondent No.2 to differentiate between Bhat Thakar and Thakar Tribe will have to be sustained.

6. Turning to the second contention learned Counsel urges that the Petitioner has submitted explanation regarding report of the Vigilance Officer and has appeared before the Committee for explaining that the earlier conclusions were not

proper. According to learned Counsel the Committee has ignored the entries in the Presidential Notification and the documents submitted by the Petitioner. Birth Certificate of his father is of year 1935 and shows the cast of his father as Thakar. Learned Counsel submits that the Committee ought to have taken into consideration the birth certificate of his father, which is pre Presidential Notification document, before holding that the Petitioner does not belong to Thakar Tribe. It is pertinent to mention here that in view of reservation in favour of Scheduled Cast and Scheduled tribes, representations were made by large number of persons for availing the concession. It was found that all the claims were not genuine. During the process of evolution guide-lines were laid down by the Apex Court in **Madhuri Patil's case reported in A.I.R., 1995 Supreme Court,Page 94.** Learned Counsel for the Petitioner has referred to some of the judgments of this Court including the judgment in Writ Petition No.5622 of 1998 in the matter of Deepak Shreerang Shinde Vs. State of Maharashtra and others decided on 24th February, 2005. After considering all the rulings on the point, Justice Rebello has summarised the propositions in para No.5 of the report as under:-

. (i) In respect of the documents

which are pre-presidential notification they would have strong, probative value.

. (ii) In terms of documents which are post Presidential Notification they would have presumptive value. This presumption can always be rebutted if on the finding of Home Study Report and the enquiry made by the Committee the Committee finds that the candidate before it is unable to satisfy that he belongs to the caste/tribe which he or she claimed, but Tribal characteristics are such that he belongs to some other caste/tribe. The first contention as advanced on behalf of the Petitioner therefore, must be rejected."

. As it is not permissible to differentiate between different sub-casts of Thakar Scheduled Tribe and as the pre-presidential documents are not properly construed, order of the Committee dated 24th November, 1997 will have to be set aside and the matter will have to be remanded for fresh consideration in the light of the propositions formulated in the matter of Deepak Shreerang Shinde Vs. State of Maharashtra and others (Supra).

. In view of the above the matter be remanded

to the Caste Scrutiny Committee for reconsideration in the light of the principles laid down by this Court in the matter of Deepak Shreerang Shinde Vs. State of Maharashtra. The Petitioner shall appear before the Committee within two weeks. The Committee to decide the matter as far as possible within six months after appearance of the Petitioner.

. In the light of that Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)